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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-493

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO; EDWARD J. CARLOUGH; and DAVID TODD,
Petitioners,

v.

ANTHONY G. PIGNOTTI, as an individual member of Local #3 Sheet Metal Workers' International Association,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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IN THE

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OCTOBER TERM, 1973

No.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO; EDWARD J. CARLOUGH; and DAVID TODD, *Petitioners,*

v.

ANTHONY G. PIGNOTTI, as an individual member of Local #3 Sheet Metal Workers' International Association, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the United States District Court for the State of Nebraska (App.[1] pp. 3a-18a) is re-

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[1] Refers to the separately printed and bound Appendix.

ported at 343 F. Supp. 236. The opinion of the Court of Appeals (App. pp. 19a-37a) is reported at 477 F. 2d 825.

JURISDICTION

The judgment of the Court of Appeals (App. p. 38a) was entered on April 20, 1973. On July 2, 1973, Mr. Justice Blackmun extended the time for filing a petition for a writ of certiorari to and including September 17, 1973. The jurisdiction of this court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether a union member can bring a suit under Section 501(b) of the Labor-Management Reporting and Disclosure Act against union officials who have not mishandled or mismanaged any funds or property of the union or used their union offices to derive a profit therefrom?

2. Whether a union member can bring suit under Section 501(b) of the Labor-Management Reporting and Disclosure Act to recover damages or injunctive relief for himself and certain other union members rather than on behalf of the local union as a labor organization?

3. Whether either Section 101(a)(1) or 501(a) of the Labor-Management Reporting and Disclosure Act requires the trustee of a local union validly placed under a trusteeship to adopt the position on a collective bargaining issue favored by the membership in a secret ballot vote at a special meeting held prior to the imposition of the trusteeship?

4. Whether a union member can bring suit under Sections 102 or 501(b) of the Labor-Management Re-

porting and Disclosure Act to obtain relief against local and International union officials in respect to actions undertaken by them in the capacity of statutory collective bargaining representatives?

5. Whether, in a suit brought under Sections 102 and 501(b) of the Labor-Management Reporting and Disclosure Act, a federal court, in evaluating the validity of the conduct of local and International union officials, may substitute its own interpretations of the union's constitution, rules of parliamentary procedure and written or unwritten customs or practices for those of the responsible union officials?

6. Whether an International union and International union officers violate Section 101(a)(1) or Section 501(a) of the Labor-Management Reporting and Disclosure Act by imposing upon a local union a trusteeship validly established in conformity with the provisions of Sections 302 and 304?

STATUTES INVOLVED

The relevant statutory provisions are set forth in Appendix A, *infra.*

STATEMENT

Petitioners[2] are an International labor union, its General President, and one of its International Representatives who served as the trustee of the local union. The local union, its president, and its business manager who were defendants in the district court and appellants in the court of appeals have not joined in this petition.

While the facts are somewhat complicated, they deal, in general, with a dispute over the participation

[2] Sheet Metal Workers' International Association, AFL-CIO —, Edward J. Carlough, and David Todd.

by members employed in a particular bargaining unit in a jointly administered employer-union pension plan obtained through collective bargaining.

Local Union No. 3 of the Sheet Metal Workers' International Association, AFL-CIO (Local 3), a "mixed" local union consisting of about 500 skilled journeymen construction workers and 150 production employees, represents both groups of employees as their exclusive collective bargaining representative. It entered into a 3-year collective bargaining agreement with the construction industry contractors on July 26, 1969, which, inter alia, provided that upon thirty (30) day notification from the union, the employers would deduct any designated amount of money from the wages of their employees and pay the same to "the sheet Metal Workers' Pension Fund". (Pl. Ex. 3, p. 9, App. B[3], *infra*, p. 8)

One of the pension plans under consideration by the local union was the Sheet Metal Workers' National Pension Fund, Plan A (the National Plan), a joint employer-union pension trust, fully qualified under Section 302 of the Labor-Management Relations Act, 29 U.S.C. § 186. The National Plan was sponsored, in part, by Sheet Metal Workers' International Association, AFL-CIO (International) and recommended by the latter to its affiliated local unions throughout the nation. The International sent representatives to Omaha to appear before the union's pension committee and the membership to attempt to persuade Local 3 to select the National Plan rather than some other plan offered by another institution.

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[3] A selected group of exhibits introduced by the parties at the trial in the district court have been printed in Exhibit B, *infra*, pp. 7-23.

A special meeting of Local 3 on March 25, 1971, was called "to vote for or against a pension plan," (App. 21a) at which a motion to adopt the National Plan was defeated by a standing vote of 93 to 66.

The membership, at the regular meeting on April 1, 1971, decided to have a "special order of business" at their next regular meeting (on May 6) "to determine whether or not Local 3 wants a pension plan." Prior to that date, on April 20, 1971, a properly executed petition calling for a special meeting[4] to take a vote by secret ballot on the specific question whether "to commence contributing 20¢ per hour to the [National Plan] on June 2, 1971" was presented to Local 3 President Walter Brader. Brader did not act on the petition at that time because of the pending special order of business which was scheduled for the May 6 regular membership meeting.

During the special order of business at the May 6th meeting, the members by secret ballot voted on the question whether to have any pension plan. There were 58 "no" votes to 43 "yes" votes. After the negative vote on that motion, another motion was made "to postpone, indefinitely, the pension plan and reference thereto (Rule 23)".[5] When the Chair an-

[4] The International Constitution provides in Article Ten (10) Section 6(a): ". . . . Special meetings *shall* be called by the local union president upon the recommendation of the local Executive Board or upon the request of at least ten (10) members in good standing or ten percent (10%) of the members in good standing, whichever is the greater." (Emphasis ours.) (Pl. Ex. 1, p. 44, B, *infra*, p. 7).

[5] Rule 23 of the Ritual of the International provides: "When a question is postponed indefinitely, it shall not come up again except by a two-third (2/3) vote". (Pl. Ex. 1, p. 129, App. B, *infra*, p. 7).

nounced the motion lost by a count (of a show of hands) of 29 to 24, its ruling was challenged. A recount by a division of the house, a procedure under which *all* members in attendance are *required* to vote by standing on one side of the room or the other, was demanded and obtained. The division of the house resulted in the motion to postpone indefinitely being carried by a vote of 60 to 30. (App. 22a)

President Brader wrote to Edward J. Carlough, General President of the International, for advice after the May 6th meeting. He asked whether the procedure followed at the May 6th meeting was proper and also whether he should still honor the April 20th petition for a special meeting. Carlough's assistant, Lonnie Gaither, who responded, advised that the motion to postpone indefinitely was out of order and should not have been entertained by the Chair and that the motion for a division of the house on the improper motion to postpone indefinitely was also in error as not being timely made.

President Brader decided to honor the April 25th petition for a special meeting, and scheduled it for May 27th. The special meeting was called to order on that day but ended without a secret ballot being taken because the membership, by a vote of 51 to 50, sustained a motion that the proposed ballot was a motion to reconsider the vote taken at the regular meeting of May 6th and, hence, out of order at the special meeting.

Protests of the adjournment of the special meeting were lodged with General President Carlough. Carlough's assistant, Lonnie Gaither, sent in Eugene Edwards, an International Representative, to inves-

tigate and resolve the dispute. Edwards directed that the special meeting be re-scheduled for June 21, 1971, for the purpose of voting by secret ballot on the specific question which was to have been put to the membership on May 27th.[6] At that special meeting, the membership voted 77 to 71 in favor of "contributing 20¢ per hour into the [National Plan] on August 1, 1973". The Local 3 officials thereafter notified the signatory construction industry contractors to commence contributing 20¢ per hour into the National Plan as of August 1, 1971, and they did so.

A properly executed petition for another special meeting "for the purpose of voting down the pension contributing plan previously passed on June 21, 1971" was submitted to President Brader on July 15, 1971. (App. 24a). When it was not honored as promptly as the pension plan opponents desired, they filed suit in the United States District Court on July 24, 1971, seeking an injunctive order to require that the special meeting be held, and for other relief. Jurisdiction for this suit was based upon Section 302 of the Labor Management Relations Act, 29 U.S.C. § 186. The District Court dismissed the suit on August 31, 1971, for failure to state a claim under Section 302 upon which relief could be granted.

President Brader then voluntarily honored the petition for a special meeting which was held on October 22, 1971. The members at the October 22nd special meeting, in a secret ballot, voted 175 to 119 "not to

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[6] The General President or his authorized representative has authority to call special meetings pursuant to Article Three (3), Section 2(f) of the International Constitution. (Pl. Ex. 1, p. 25, App. B, *infra*, p. 7).

retain our National Plan in Local No. 3". (App. 24a)

The officers of Local 3 shortly after this meeting consulted with their attorney, Mr. David D. Weinberg. He advised that they were under obligation to make every effort to negotiate with the employers to reopen the collective bargaining agreement in order to withdraw from participation in the National Plan. The Local 3 negotiating committee, accordingly, on October 29th and again on November 17th requested a meeting with the collective bargaining representatives of a number of the signatory construction industry contractors, but the contractors' representatives did not meet with them until December 2, 1971. When the meeting finally took place, the contractors' representatives agreed to delete the obligation to participate in the National Plan only if Local 3 would accept three conditions,[7] one of which was an undertaking by the union to hold the employers harmless from any liability to prospective pensioners resulting from the aforesaid mid-term modification of the collective bargaining agreements. (App. 24a-25a).

Mr. Weinberg was again consulted, this time in regard to the conditions imposed by the contractors. He strongly advised, orally and in an opinion letter,[8] against acceptance of those conditions unless they were first approved by a court of competent jurisdiction in a declaratory judgment action. The legal complications over which Mr. Weinberg expressed appre-

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[7] Pl. Ex. 78, App. B, *infra*, p. 8.

[8] Pl. Ex. 84, App. B, *infra*, pp. 9-10. (This letter was sent on January 3, 1972, rather than January 3, 1971, as mistyped).

hension involved questions of third party beneficiary rights and possible violations of fiduciary duties imposed on the local union officers under Section 501(a).

Attorney Weinberg's misgivings were to have been brought up for discussion at the next regular meeting on January 6, 1972, but prior to this date, on January 4, 1972, Local 3 was placed under trusteeship by General President Carlough. A number of internal union problems, none of which pertained to the pension plan controversy, were cited as grounds for taking this action,[9] and it was ratified on March 23, 1972, by the International's General Executive Council after a hearing in Washington, D.C. The court of appeals held that the trusteeship was imposed in conformity with the procedural requirements of Sections 302 and 304 of the Act. (App. 28a).

David Todd, an International Representative, who was appointed as trustee of Local 3, told the membership shortly after he assumed his duties that he intended to continue participation in the National Plan as a fringe benefit in the collective bargaining agreement with the construction industry contractors.

Anthony Pignotti thereafter filed the complaint herein in the District Court, naming as defendants the National Plan Trust Fund and the Contractor's Association, as well as the International, Local 3, Carlough, Todd, Forman and Brader. Jurisdiction was purportedly based on Sections 102 and 501(b) of the Labor-Management Reporting and Disclosure Act. The District Court, after trial, dismissed the National Plan Trust Fund and the Contractors' Association from the suit, but held that the International, Local 3, Carlough,

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[9] Def. Ex. 96, 97, 98 and 99, App. B, *infra*, pp. 13-23.

Todd, Forman and Brader violated Sections 101(a)(1) and 501(a) of the Act.

The finding of Section 101(a)(1) violations were based upon the court's evaluation of action or inaction by union officials in the following respects: (1) General President Carlough's authorization of the election on June 21, 1971, in the aftermath of three prior defeats and *"especially after the motion to postpone indefinitely"*; (2) the delay on the part of Forman and Brader in calling another special meeting which, the Court felt, "was mandated" by the petition of July 15, 1971; (3) the "blatant refusal" of Brader, Forman and Carlough "to implement the vote of October 21, 1971";[10] (4) the imposition of the trusteeship upon Local 3; and (5) Todd's refusal as trustee to implement the membership's vote of October 22, 1971. (App. 13a-14a).

The same alleged violations of Section 101(a)(1) were held to be violations of the fiduciary duties imposed in Section 501(a). The District Court, in order to arrive at this conclusion, defined fiduciary responsibility in an extremely broad manner relying mainly on the authority of *Johnson v. Nelson,* 325 F. 2d 646 (8th Cir. 1963).

The District Court granted injunctive relief requiring immediate elimination of the pension plan as a contractual fringe benefit for those members employed in the construction-industry bargaining unit. In addi-

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[10] The decision of the union officers to follow the advice of local union attorney David Weinberg not to accept the three conditions insisted upon by the contractors unless approval of the same was obtained from a court of competent jurisdiction in a declaratory judgment action, thus, is characterized as "blatant" misconduct violative of Section 101 (a)(1).

tion, it amerced defendants International, Local 3, Brader, Forman, Todd and Carlough with damages to be paid to Respondent and the other members who were employed in the construction-industry bargaining unit, equivalent to *all* of the contributions made by the various construction industry *employers* to the National Plan trustees—a sum in excess of One Hundred Thousand Dollars ($100,000.00)—despite the fact that none of the parties had received any of these contributions or profited personally from the fact that they had been made and notwithstanding that the contributions were being held in trust on behalf of any bargaining-unit employees who qualified for pension benefits under the plan. These injunctive and pecuniary remedies, by consent of the parties and with approval of the District Court, have been stayed during the pendency of the appeals of the case.

The court of appeals affirmed. A major portion of the Court's opinion was devoted to a defense of its prior decision in *Johnson v. Nelson, supra,* in which Section 501(a) had been interpreted as imposing on union officers broad responsibilities far beyond those involving alleged mishandling or mismanagement of union money or property. (App. 30a).

REASONS FOR GRANTING THE WRIT

I. The decision below conflicts with decisions of the Second Circuit as to the proper definition of fiduciary responsibility under Section 501(a)

The decision of the Court of Appeals permits Respondent to sue Petitioners under Section 501(b) of the Labor-Management Reporting and Disclosure Act for injunctive relief and monetary damages

even though no union funds or property are involved and no claim is made that any union officials held or acquired any pecuniary interests in the National Plan which conflicted with those of the labor union. It is in direct conflict with decisions of the Second Circuit in *Gurton v. Arons,* 339 F. 2d 371 (2d Cir. 1964), affirming *Guarnaccia v. Kenin,* 234 F. Supp. 429 (S.D. N.Y. 1964); *Coleman v. Railway Clerks,* 340 F. 2d 206 (2d Cir. 1965); *Yanity v. Benware,* 376 F. 2d 197 (2d Cir. 1967); and *Morrissey v. Curran,* — F. 2d —, 83 LRRM 2950 (2d Cir. June 18, 1973). These Second Circuit decisions have been followed by a number of district courts, e.g., *Charles v. American Federation of Musicians,* 241 F. Supp. 595 (S.D. N.Y. 1965); *Richardson v. Tyler,* 309 F. Supp. 1020 (N.D. Ill. 1970); *Aho v. Bintz,* 290 F. Supp. 578 (D. Minn. 1968); cf. *McNamara v. Johnson,* — F. Supp. —, 83 LRRM 2497 (N.D. Ill. June 6, 1973).

The conflict between the Second and Eighth Circuits has caused uncertainty in other circuit courts throughout the nation with respect to this issue. For example, the District of Columbia Circuit is apparently undecided as to whether the view of the Eighth Circuit or the Second Circuit is correct. *Jablonski v. United Mine Workers,* 466 F. 2d 424, 428 (footnote 5) (D.C. Cir. 1972); but see *Cefalo v. Moffett,* 449 F. 2d 1193, 1198 (footnote 15) (D.C. Cir. 1971). The Ninth Circuit is in the same posture of indecision. *Kerr v. Shanks,* 466 F. 2d 1271, 1275 (footnote 2) (9th Cir. 1972). The Third Circuit in *Sabolsky v. Budzanoski,* 457 F. 2d 1245 (3d Cir. 1972), cert. den. — U.S. —, 34 L.Ed 2d 96 (Oct. 10, 1972), by dicta, has adopted the Eighth Circuit's position.

The directness of the conflict between circuits on the issue was plainly recognized by the court of appeals below, and it said:

> "We are invited by the appellants to reconsider our holdings in *Johnson v. Nelson,* 325 F.2d 646 (8th Cir. 1963), concerning the scope of § 501(a) on the basis of contrary decisions in the Second and Ninth Circuits . . . . The Second Circuit in *Gurton v. Arons,* 339 F.2d 371 (2d Cir. 1964) and *Coleman v. Brotherhood of Ry. & Steamship Clerks, Freight Handlers, Express & Station Employees,* 340 F. 2d 206 (2d Cir. 1965) has restricted the scope of § 501 (a) only to situations involving 'money and property' of the union. The Ninth Circuit appears to follow Gurton in Phillips v. Osborne, 403 F. 2d 826 (9th Cir. 1968) . . . .
>
> * * *
>
> "Based on the history outlined above, it appears clear that *Gurton v. Arons,* based as it was on the legislative history of the Kennedy-Ervin Bill which was amended out of existence, was unduly restrictive of the scope of the fiduciary duties of union officials commanded by § 501, and that *Johnson v. Nelson,* basing its decision on the legislative history of the Elliott Bill, was properly decided." (App. pp. 29a-30a, 35a).

The conflict among circuits on this issue should be resolved in order to achieve the desired national uniformity in labor policy. As the question is one of a recurring nature, its resolution is of singular importance.

II. The decision below conflicts with the decision of the Ninth Circuit in Phillips v. Osborne as to the right of a union member to sue under Section 501(b) to recover damages for himself rather than on behalf of the labor union

All of the monetary relief sought and obtained by Respondent in the instant case was for the benefit of himself and certain other union members.

The decision of the court of appeals conflicts squarely with *Phillips v. Osborne*, 403 F. 2d 826 (9th Cir. 1968). In *Phillips*, the plaintiff sued under Section 501(b) to recover and distribute union funds which had been impounded and deposited in an escrow account to place them beyond the control of dissident members who wanted to disaffiliate the local chapter from the international union. The Ninth Circuit held that the suit was not allowable because (1) plaintiff was not a member of the union at the time suit was instituted and (2) in any event the funds plaintiff sought to recover were not to be paid into or inure to the benefit of the local union but, rather, were to be distributed equally among the paid-up members of the local union as of a date certain. The Ninth Circuit said (403 F. 2d at 832):

> "In requesting direct relief for certain union members only and not 'for the benefit of the labor organization,' Phillips disqualified himself from proceeding under Section 501."

This holding is obviously correct in light of the statutory language of Section 501(b) which permits suit "in any district court . . . to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization . . . ."

III. The court of appeals improperly held that Sections 101(a)(1) and 501(a) require a trustee of a local union to act in accordance with the wishes of the membership on policies voted upon prior to imposition of the trusteeship

The court of appeals held that a trustee is bound by and has an obligation under Sections 101(a)(1) and 501(a) to implement the intendment or purpose of a membership vote taken prior to the imposition of the trusteeship. (App. 29a). Thus, trustee David Todd in his prospective collective bargaining negotiations with the building trades contractors was held to be under a statutory duty to delete the National Plan as a contractual fringe benefit.

The holding on this issue, for which there is no precedent, is a sheer fabrication on the part of the courts below in an attempt to obligate trustee David Todd to take specific affirmative action on a collective bargaining issue, on which he has discretion to act in various ways provided only that he must exercise his authority to bring about a result he believes to be in the best interests of the union. The trustee under this erroneous holding would become "subject to the control of the very body he was appointed to supervise and govern", thus negating the very nature of a union trusteeship. *Branch v. Vickers*, 209 F. Supp. 518, 522-523 (E.D. Mich. 1962); *Blassie v. Poole*, not officially reported but cited at 58 LRRM 2359 (E.D. Mo. 1965).

The Court should review this erroneous interpretation and application of Sections 101(a)(1) and 501(a).

IV. The court of appeals improperly held that Sections 101(a)(1) and 501(a) regulate conduct of union officials in their capacity as exclusive collective bargaining representatives

The conduct on the part of the union representatives to which Respondent takes greatest exception and for which he sought pecuniary relief relates to their actions as collective bargaining representatives. The "implementation" of participation in the National Plan, after June 21, 1971, was collective bargaining activity. The unsuccessful attempts to negotiate a contract reopening after October 22, 1972, to delete the pension plan as a fringe benefit were even more directly activities of bargaining representatives.

The National Labor Relations Act imposes extensive obligations on the bargaining representatives of employers and employees in Section 8(d), 29 U.S.C. § 158(d). Refusal to bargain in good faith is made an unfair labor practice for employers, Section 8(a)(5), 29 U.S.C. § 158(a)(5), and for labor organizations acting in the capacity of employee bargaining representatives, Section 8(b)(3), 29 U.S.C. § 158(b)(3).

Inasmuch as labor unions through these provisions of the National Labor Relations Act become exclusive representatives of all employees in the bargaining units regardless of their union affiliation, *NLRB v. J. I. Case Co.*, 321 U.S. 332 (1944); *Medo Photo Supply Corp.* v. *NLRB*, 321 U.S. 678 (1944), and acquire great power over their economic destiny, they have been impressed by the courts with a correlative *statutory* duty to represent fairly all members of the bargaining unit regardless of union affiliation, race, color, creed, national origin, or personal bias or hostility on the part of union officers or agents. *Steele v.*

Louisville & N. R. Co., 323 U.S. 192 (1944); *Ford Motor Company v. Huffman*, 345 U.S. 330 (1952); *Vaca v. Sipes*, 386 U.S. 171 (1967). This statutory duty of fair representation may be enforced judicially in suits brought by individual members under Section 301 of the National Labor Relations Act. *Vaca v. Sipes, supra.*

The Labor-Management Reporting and Disclosure Act, on the other hand, was *not* enacted by Congress to regulate collective bargaining activities which are concerned with relations between employees and their employer, *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967); *Strauss v. Int. Bro. Teamsters*, 179 F. Supp. 297, 300 (E. D. Pa. 1959); *McAfee v. Auto Workers*, not officially reported but cited at 71 LRRM 2515 (E. D. Mich. 1969), or to provide union members with an additional remedy for alleged arbitrary or improper collective bargaining representation. The court of appeals has erroneously interpreted Sections 101(a)(1) and 501(a), however, and provided Respondent with precisely such a remedy.

The court should rule on this point in the interest of harmonizing the variant labor policies under these two federal Acts.

V. The court of appeals improperly evaluated the validity of union conduct on the basis of its own interpretations of the union constitution, rules of parliamentary procedure, customs and practices rather than those of the responsible union officials

The court of appeals has disagreed with most of the decisions made and actions taken by the responsible union officials in the instant case. However, Petitioners Carlough and Todd and the local union officers, Brader and Forman, are laymen who have been duly

elected to International and local union offices. They exercised judgment in dealing with the various problems that developed. When in doubt, they sought and followed legal advice. The actions of the International and local union officers were always "reasonable" in the sense that they were logically justifiable to them under union principles, customs and practices, even though, as aforesaid, the courts below may have felt that the decisions were improvident or incorrect or otherwise.

The court's conclusion that the union officers acted improperly on the pension issue is bottomed on its own interpretations of the duties of union officials such as the union president and union business manager, which are prescribed in the International Constitution, and its own views, rather than those of the responsible union officials, on the proper interpretation and application of rules and principles of parliamentary procedure at union meetings. Questions such as how many times an issue can be brought up for vote by the membership and the effect in a parliamentary sense of a motion to postpone indefinitely are peculiarly internal union matters which, it is submitted, were dealt with improperly by the courts below.

The decision of the court of appeals is remarkably analogous to that of the Fifth Circuit in *Int. Bro. Boilermakers v. Hardeman,* 420 F. 2d 485 (5th Cir. 1969), although the issue in *Hardeman* was court review of union disciplinary proceedings rather than, as here, judicial evaluation of union conduct with respect to a collective bargaining issue. The Fifth Circuit in *Hardeman* construed the penal provisions of the union's constitution more strictly than did the union's officers. Then, based upon a restrictive construction of

the language, the court found that the union violated the constitution and, hence, denied Hardeman his rights of fair trial under Section 101(a)(5) of the Act.

This court made clear on review, *Int. Bro. Boilermakers v. Hardeman,* 401 U.S. 233 (1971), that the union through its duly constituted officers rather than the court was entitled to interpret the union's rules and regulations, regardless whether the same were contained in the union constitution, by-laws, principles of parliamentary procedure or even in unwritten principles or precedents. The Court should declare here by analogy to *Hardeman* that conduct relating to internal union matters should be sustained unless the same, when viewed and evaluated in accordance with the constitutional interpretations placed upon it by the responsible officers in the union hierarchy, is inimical to the provisions of the Act.

The decision of the court of appeals, which plainly did not apply that standard for review, will, if not corrected, lead to an "in depth intervention into internal union affairs," which Congress never intended. Beaird, Some Aspects of the LMRDA "Bill of Rights," 5 Ga. L. Rev., 661, 662 (1971).

VI. Petitioners did not violate any duties under Sections 101 (a)(1) or 501(a) by imposing a trusteeship in conformity with the requirements of Sections 302 and 304

The court of appeals affirmed the district court's finding that the International's imposition of a trusteeship over Local 3 was a violation of Sections 101(a)(1) and 501(a) because the "real" ground for such action was to prevent Local 3 from withdrawing its construction industry members from participation in the National Plan. (App. 28a-29a). There simply is no

precedent and no logic for this holding. If union members can challenge *the grounds for imposition of the trusteeship* in suits under Sections 102 and 501(b), in which no presumption of validity is applicable, they will obviously be disinclined to resort to the remedy expressly provided by Congress in Section 304(c). In a suit under Section 304(c) challenging the validity of a trusteeship established in compliance with its procedural requirements, the plaintiff is required to show by "clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under Section 302."

It is true that Section 306 of the Act states that the rights and remedies provided in Title III shall be in addition to any and all other rights at law or in equity. However, we submit that Congress never intended that the grounds for establishment of trusteeships imposed in accordance with the procedural requirements of one Title, pursuant to which a presumption of validity is attached, should be made subject to collateral attack in civil suits under other Titles *of the same federal statute* to which that presumption is inapplicable.

The ruling on this point by the court of appeals is not only incorrect but inherently mischievous and vexatious in that it invites a proliferation of lawsuits over trusteeship. Review of the issue is indeed imperative.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

DONALD W. FISHER
741 National Bank Building
Toledo, Ohio 43604

DAVID D. WEINBERG
300 Keeline Building
Omaha, Nebraska 68102

Attorneys for Petitioners

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
741 National Bank Building
Toledo, Ohio 43604

WEINBERG AND WEINBERG
300 Keeline Building
Omaha, Nebraska 68102

September 17, 1973.

APPENDIX

APPENDIX "A"

Labor Management Reporting and Disclosure Act
(73 Stat. 522, 29 U.S.C. §§ 411, et seq.)

Sec. 101(a)(1) Equal Rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and by-laws.

* * *

Section 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

* * *

Section 302. Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

Section 304(a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this

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• • •

Section 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

• • •

Section 302. Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

Section 304(a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this

title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

(b) For the purpose of actions under this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization (1) in the district in which the principal office of such labor organization is located, or (2) in any district in which its duly authorized officers or agents are engaged in conducting the affairs of the trusteeship.

(c) In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under Section 302. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court

may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate.

• • •

Sec. 306. The rights and remedies provided by this title shall be in addition to any and all other rights and remedies at law or in equity; *Provided,* That upon the filing of a complaint by the Secretary the jurisdiction of the district court over such trusteeship shall be exclusive and the final judgment shall be res judicata.

• • •

Sec. 501. (a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and by-laws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated

the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

• • •

National Labor Relations Act, as amended (49 Stat. 449, 29 U.S.C. §§ 151, et seq.):

Sec. 8(a) It shall be an unfair labor practice for an employer—

• • •

(5) to refuse to bargain collective with the representatives of his employees, subject to the provisions of section 9(a).

Sec. 8. (b) It shall be an unfair labor practice for a labor organization or its agents—

• • •

(3) to refuse to bargain collective with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

• • •

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reach if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after

such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9 and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

• • •

Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

• • •

APPENDIX "B"

Plaintiff's Exhibit 1

International Constitution

Articles Three (3), Section 2(f), p. 25

"Sec. 2(f). Call of special meetings of local unions and councils. Local unions, state, provincial, and district councils shall upon call of the General President or a duly authorized representative of this Association after official notice to the duly authorized officers of said local unions, state, provincial, and district councils, assemble and convene in meeting at such time and place and for such purpose as may be designated in call and official notice issued; and said meeting shall not adjourn without the approval and consent of the General President of the duly authorized representative of this Association calling said meeting."

Article Ten (10), Section 6(a), p. 44

"Sec. 6(a). Each local union shall determine the times and places for the holding of its regular meetings and determine how many of its members shall constitute a quorum. Special meetings shall be called by the local union president upon the recommendation of the local Executive Board or upon the request of at least ten (10) members in good standing or ten percent (10%) of the members in good standing, whichever is the greater. The call for such special meeting shall specify the time, place and purposes thereof, and no subjects other than those specified in the call shall be considered at such meeting."

Ritual, Rule 23, p. 129

"23. When a question is postponed indefinitely, it shall not come up again except by a two-thirds (⅔) vote."

Plaintiff's Exhibit 3

Collective Bargaining Contract, Article VIII, Section 14, p. 9

"Section 14. Pension: The Employers agree that upon a thirty (30) day notice by the Sheet Metal Workers Local # 3 to deduct specific amount on specific dates from the gross hourly wage rate as requested by the Union and pay said amount to the sheet Metal Workers Pension Fund. By the execution of this agreement the Employer also agrees to enter into the appropriate Trust Agreement within the time limit specified above necessary for the administration of such fund and to designate the Employer Trustees under such Agreement hereby waiving all notice thereof and ratifying all actions taken or to be taken by such Trustees within the scope of their authority."

Plaintiff's Exhibit 78

Phone 558-3961

AIR CONDITIONING & SHEET METAL CONTRACTORS ASSOCIATION OF OMAHA-COUNCIL BLUFFS

Bob Hooker, Executive Director

4470 Farnam Street
Omaha, Nebraska 68131

December 2, 1971

To: Local # 3

Subject: Re-opening of Labor Agreement to delete Pension Fund Clause

We will honor a request to re-open our contract only to delete *all* provisions relative to the pension trust if:

1. It is made in writing and in such a manner that it needs no further union ratification to complete the re-opening and execution of all necessary documents.
2. The pension trustees release the contractor's association from all liability for the deletion and the union

agrees to hold the association and it's members harmless from any liability from deletion of the pension trust.

3. In the event agreement is reached to delete the pension provision as requested it will be conditioned that the pension cannot be re-instated during the remainder of this contract.

GEORGE DEAS
George Deas
Chairman, Labor Committee
SMACNA, Omaha and Council Bluffs

Plaintiff's Exhibit 84

DAVID D. WEINBERG
ATTORNEY AT LAW

Telephone 341-2250
300 Keeline Building
Omaha, Nebraska 68102

January 3, 1971

Sheet Metal Workers International Association,
Local No. 3

1821 California Street
Omaha, Nebraska

Attention: Walter Brader, President

In re: Legal status of change of contract from a pension plan to payment to employees covered by plan for wages in cash

Dear Sir:

You and your executive board have requested an opinion from this office as to a change in the presently existing collective bargaining agreement calling for payment into

a pension trust of 20¢ per hour so that said funds may be diverted to employees in cash, instead of into a pension fund.

A review of the facts in this matter indicate that several years ago the union and Air Conditioning & Sheet Metal Contractors Association of Omaha-Council Bluffs entered into a collective bargaining agreement calling for payment of so many cents per hour as determined by the union into a pension fund. Section 14 of Article VIII of the collective bargaining agreement is as follows:

> "Pension: The Employers agreed that upon a thirty (30) day notice by the Sheet Metal Workers Local # 3 to deduct specific amount on specific dates from the gross hourly wage rate as requested by the Union and pay said amount to the Sheet Metal Workers Pension Fund. By the execution of this agreement, the employer also agrees to enter into the appropriate Trust Agreement within the time limit specified above necessary for the administration of such fund and to designate the Employer Trustees under such Agreement hereby waiving all notice thereof and ratifying all actions taken or to be taken by such Trustees within the scope of their authority.

Pursuant to the terms and provisions of the above paragraph of the collective bargaining agreement your local union notified the association that they desired to allocate 20¢ per hour into a pension fund and, in particular, into the Sheet Metal Workers National Pension Plan. This was accomplished by notification and employers responded to this request by payments into the National Pension Plan. In addition to this, member and non-member employers of the association signed and executed Participation Agreements into the Sheet Metal Workers National Pension Plan. These participation agreements constituted an agreement of the individual contractor to pay into said fund and to

abide by the actions of Trustees with regard to said pensions.

Thereafter, the local union decided to attempt to terminate this plan and to place the 20¢ per hour contribution into the pay checks of employees. Contact was made with the association who agreed to re-open the collective bargaining agreement and to delete the pension fund clause upon the following conditions:

1. Such request was made in writing and that no further union ratification to complete the re-opening and execution of all necessary documents was required.
2. The Pension Trustees release the association from all liabilities for the deletion and termination of the fund and to hold the association and its members harmless from any liability because of this action.
3. In the event an agreement is reached with regard to this matter the pension could not be reinstated during the remainder of the contract.

There are certain fundamental legal facts that should be kept in mind by the union with regard to the situation. In the first place, a valid pension plan was negotiated and executed between the parties which immediately gave rise to certain rights of employees covered by the collective bargaining agreement. Dependent upon eligibility for pension established by trustees and the trust instrument, employees represented by this union were legally entitled to a pension in accordance with the provisions of the contract and the Sheet Metal Workers National Pension Plan. A change of these rights of third parties by altering or amending provisions of an existing collective bargaining agreement, raises serious legal risks to both the union and the association and the non-members of the association. It is my opinion that in view of all of the facts, that have been created in this matter, employees who are third party beneficiaries of this act on the part of the association and

the union would have a cause of action against the union and perhaps the association, and any other contractor for that matter, for failure to grant such pension when the same has been negotiated by the parties.

In the employer's conditions relative to a change in the pension plan, the association desires and requests release from any liability for deletion of the pension plan. This could readily mean from a legal standpoint, that in the event the union was held to be in error in this move all liability would be attached to it if there would be a change in the rights of third party beneficiaries under the collective bargaining agreement. Recent cases, decided by the courts, have tended to enforce this legal position and it is impossible to state in this opinion, the exact nature and extent of the union's liability, should some court in the future decide the union had no right to delete a third party right to a pension under the contract.

It is my opinion that the officials of the union who may agree to a deletion in the manner required by the association may violate their fiduciary capacity under the Labor Management Relations Act of 1959 (Landrum Griffen Act). Officials of labor organizations under the above act are requested to act in the fiduciary capacity and for the best interests of the people they represent and any violation thereof may involve a severe penalty individually to officials.

This matter may be accomplished as requested by the local union in its vote to delete the pension plan in the following manner, subject to approval and participation by all parties. A declaratory judgment action may be requested by one of the interested parties in this matter to determine the potential liability, if any exists, of the local union in this matter, provided, that the association, non-members of the association, and the local union and the Sheet Metal Workers National Pension Plan were involved in the proceeding. If a court of competent jurisdiction determined

that the local union had a right to delete the pension plan in agreement with the association and non-association members as well as approval of the trustees of the Sheet Metal Workers National Pension Plan, this matter may be accomplished. A declaratory judgment action cannot ordinarily lie unless a justiciable controversy exists.

It is my opinion that the local union should not engage in voluntary negotiations for deletion of this plan approved by some definitive court ruling as to its right to do so and a judicial determination as to the issues that would be presented in any such action. To do otherwise, in my opinion would place the local union in a very doubtful legal situation that could conceivably result in tremendous legal liability.

Respectfully submitted,

/s/ David D. Weinberg
David D. Weinberg

DDW:sp

Defendant's Exhibit 96

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION
David E. Todd
International Organizer
6409 North Central
Kansas City, Missouri 64118

July 9, 1971

Mr .Edward J. Carlough
General President
Sheet Metal Workers' International Association
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Sir and Brother:

I have just completed my investigation of the conditions that exist in Local #3 at Omaha, Nebraska and its jurisdictional area, as per your instructions.

In order to accomplish this assignment, I met with the local union Executive Board, Business Representatives, the Executive Secretary, and officers of the SMACNA chapter. I checked, in every way possible, the statements made by each group, in order to separate fact from fiction, and have the following report which I believe is accurate.

Local #3 has one hundred out of five hundred journeymen out of work at this time, without any chance for relief in the next twelve months within the Omaha free zone, for the simple reason that there is little work going on or coming up in that area. The free zone is a small area 20 road miles in any direction from the center of Omaha.

On the other hand, there is a lot of work going on, and coming up in the out-of-free-zone area, much of which is within an hour or so drive from downtown Omaha. So, if these one hundred people are to work within the next year, it will have to be in this out-state area in Nebraska and Iowa. However, under present contract conditions in the out-of-free-zone area there is no way that our union contractors can get any work because of the travel pay and subsistence that is required along with the Omaha wage rate and conditions required in all area by the contract signed in '69.

I believe that the above statement can easily be proved by the conditions that now exist in that area, for example, the union contractors have only one job in process at this time and it is small. Also, they have only one job coming up in the future and it was not an open-bid job where the nonunion people could get in on it. Local #3 does not have any men working in the out-of-free-zone area, except for the previously-mentioned small job and three working for a KC contractor on a power plant. Since Local #3 has approximately 51 counties in this area, there is no way they could be in worse shape. It's probably needless to mention, but Local #3 does not have one single contractor signed outside the free zone.

The following are examples of out-of-free-zone conditions that have placed Local #3 in a noncompetitive position with other crafts and nonunion contractors in particular:

***Blair, Nebraska*—6 miles from free zone; Cost of travel and subsistence $6.36 per day per man; Driving time 40 min. from downtown Omaha.**

***Grand Island, Nebraska*—117 miles from free zone; Cost of travel and subsistence $2.62 per hr. per man; Driving time 2 hrs. and half from downtown Omaha. Ironworker rate is $6.17½ per hr. & no travel or subsistence for this area. Our rate would be $10.62 per hr.**

***Shenandoah, Iowa*—51 miles from free zone; Cost of travel and subsistence $2.21 per hr. per man; Driving time 90 min. from downtown Omaha.**

The nonunion people and the steelworkers are having a field day doing all the present work and getting the future work, and will continue to do so until some changes are made. Since there is a large volume of work coming up in the out-of-free-zone in the very near future, these changes should be made immediately to do any good.

Contained herein is a list of jobs lost by two of our contractors in the out-of-free-zone area. This list was furnished by the local chapter of SMACNA and they are preparing other lists which will be mailed to me in the near future.

There are other area in which some action should be taken if Local #3 is going to police the work, even within their free zone. Such action should include some minor change in the overtime rate for residential servicemen. Enclosed are rates of union and nonunion service shops which were compiled by SMACNA.

In regard to the sign shops, there are seventeen shops in which we should have people. Currently, we have three shops signed, two of which are now employing four of our

members. Our current wage rate is the same as the building trades agreement, $8.00 per hr. including fringes. The Electrician rate is $6.43 per hr. including fringes, and the Painter's rate is $5.80 per hr. including fringes, except that he has a 2-week vacation in addition. I met with the sign shop industry committee, which is represented by SMACNA, and they were quick to tell me that as long as Local #3 insisted on the building trades contract for the sign shops they had no intention of hiring sheet metal workers if they could keep from it. So, some change must also be made in this area. However, in our meeting they did agree that at least four more shops would sign with Local #3 if we could come up with a reduced rate or some kind of freezing of the present rate.

Local #3 has a percentage of the wage rate which applies to swingstage work and amounts to approximately 55¢ per hr. at this time. The Ironworkers rate is approximately $1.83 below ours at the present time so this additional premium on top of our rate has almost put us out of the siding business. Therefore, something needs to be done here.

Our kitchen shop work is going fast but at this time I don't really know what needs to be done to save it.

Local #3 does not have a night air conditioning rate and the nonunion people are doing most of this in the small office buildings and the Business Agents have not been able to cope with this situation.

In my meeting with the Executive Board, I informed them that they were not in any way, shape of form either manning or servicing the out-of-free-zone area granted to them under their charter and that if they did not present to me by July 8th some type of arrangement which had been approved by their membership to service this jurisdiction, that the International Association would take some action that would give members of our International

the opportunity to work in the area. However, I did not tell them specifically what should be done because I felt they should have the chance to correct the situation in their own way.

Since that time, the Executive Board met with the union membership and did not recommend any changes and the members at that meeting informed the officers "To Hell with the International Association and the horse it came in on". Therefore, I can only recommend to you that the International Association take over Local #3 and do whatever is necessary to correct some of the aforementioned problems. I would not recommend such action if I though the Business Representatives were capable of overcoming the problems but I know that their hands are tied by the Executive Board and the membership and they cannot do anything to change the local situation.

Should you so desire, I have prepared a list of specific changes that I would make immediately and will furnish it upon your request.

Fraternally yours,

/s/ David E. Todd
David E. Todd
International Organizer

DET:mr
enc's.

Defendant's Exhibit 97

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION
1000 Connecticut Ave.
Washington, D.C. 20036
Phone: 296-5880

October 18, 1971

Mr. David E. Todd
International Organizer
6409 North Central
Kansas City, Missouri 64118

Dear Sir and Brother:

This is in reference to your special report to me of July 9, 1971, concerning the situation prevailing within the jurisdiction of Local 3.

I have not acted on this report prior to this time in the forlorn hope that Local Union 3 would take self corrective action in the multitude of problems that they now face and have faced for some time. It is now rather obvious to me that this local has no intention of rectifying these horrible conditions on its own and I cannot permit such a disaster area to masquerade under the charter of a Local Union affiliated with this International Association.

Kindly update your report and send me your written recommendations in each of the areas you mentioned as to how we can begin rectifying this situation. Include in your recommendations sufficient date concerning rates free zones, travel allowances, conditions, etc. of the plumbers, pipefitters, ironworkers and electricians in the Omaha area.

Fraternally yours,

/s/ EDWARD J. CARLOUGH
Edward J. Carlough
General President

EJC/mha

cc: Mr. David S. Turner
Mr. Clarence Mulholland
ckrm.

Defendant's Exhibit 98

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION
DAVID E. TODD
International Organizer
6409 North Central
Kansas City, Missouri 64118

December 7, 1971

Mr. Edward J. Carlough
General President
Sheet Metal Workers' International Association
1000 Connecticut Avenue, N.W.
Washington, D. C. 20036

Dear Sir and Brother:

In reply to your letter of October 18, 1971, I have the following to report: The situation in Omaha, Nebraska Local Union #3 is basically the same as I outlined to you in my letter of July 9, 1971.

The travel pay and subsistance of the other trades you requested information on is as follows:

ELECTRICIAN

They have the same 20 road mile free zone as Local #3 and the United Association. Their travel and subsistance is combined together beginning with 20 to 25 miles—$2.00. 25 to 30 miles—$2.50 and with increases thereafter with $.50 per five miles with the last road mile being 100 miles or plus—$10.00. However in most cases jobs of any size and duration are usually negotiated on whatever amount the traffic will bear so that they can protect their jurisdiction. The business manager is able to accomplish this by the following claus in their contract which follows the travel and subsistance mutually satisfactory. Special arrangement may be worked out between the individual employer involved, and the union for large long time jobs. The journeymen rate as of Jan. 1, 1972 will be $8.30 per hour, an approximate fringe of $0.50.

UNITED ASSOCIATION

Thru May 14, 1972 is a total of $8.95 per hour including fringes, etc. Their free zone is 20 road miles from the center of Omaha, which is the same as our Local #3 has. An employee sent by the contractor outside the free zone will be paid 12 cents per mile from the free zone to the job site and back for each day of work. If an employee is required by the contractor to stay over night, his room and board will be paid. However there is another section of the contract which shoots this all to Hell. It states that the employer may select to hire outside of the free zone at the job site in this case travel and subsistance will be negotiated with the Local Union with a maximum of $10.00 per day for each day worked. So for all practical purposes the business manager makes the final determination on what the travel and subsistance should be on a job basis except for the superintendent for foremen which the contractor may send to the job site.

IRONWORKERS

Local #3 was unable to obtain an ironworker's agreement for me. So I will have to pass on what I have been told. Their total package including fringes is approximately $7.80 per hour. However an $1.25 of this total package was agreed upon during the freeze retroactive to June of 1971, therefore we are not sure exactly how he is going to come out on this. They do not have travel time or subsistance except what they may negotiate on a job to job basis and this has not been done very often.

My recommendation as to what should be done are as follows:

1. Place the Local Union under trusteeship.
2. Keep the present B. A. active in office.
3. Open the contract for negotiations.
4. Enlarge the free zone to a 25 to 30 mile radius to take in the town of Blair & Freemont, Nebraska and others in this circle.

5. The next circle would be a 50 or 55 mile radius zone with a total travel pay of $2.50 per day—Monday thru Friday.
6. The next circle would be a 75 or 80 mile circle with a total travel pay of $5.00 per day—Monday thru Friday.
7. The rest of the area of Local #3 is so open that I don't really know what to recommend at this time. But one thing is for sure Local #3 has 100% of nothing in the area.
8. On residential service men, their overtime should be 1½ after 8 hours per day and 40 hrs. per week only. This way some men can be scheduled Wednesday thru Sunday. Under the present set up we do not get any Saturday or Sunday service calls.
9. Reduce the wage rate in the sign shops or under our wage freeze problems, extend the contract for another two years.
10. Eliminate the 55 per hour premium for swinging stage work.
11. Establish a night air conditioner rate at time and one quarter for occupied office buildings.
12. Some changes in the kitchen shops but exactly what I don't know right now.
13. Establish a so called out-state contract so we can sign our shop outside the Omaha area.
14. If trusteeship can not be made to stick, reduce the jurisdiction of Local #3 to it's 20 road mile free zone and place it's jurisdiction with another or other locals that we can work out satisfactory agreement with.

Fraternally yours,

David E. Todd
International Organizer

DET:vk

Defendant's Exhibit 99

January 4, 1972

Mr. David E. Todd
International Representative
Sheet Metal Workers'
International Association, AFL-CIO
6409 North Central
Kansas City, Missouri 64118

Dear Sir and Brother:

This will confirm my telephone instructions of this date advising that you are directed, as my designated representative and on my behalf, to assume immediately the management and control of Local Union No. 3, Omaha, Nebraska.

This action is taken on the basis of the report and recommendation contained in your letters to me under date of July 8, 1971, and December 7, 1971, in which you set out the results of your investigation into the conditions existing in that Local Union. The grounds for my action are substantially those contained in your reports and are outlined in my letter of this date, addressed to Walter Brader, President of Local Union No. 3, a copy of which is attached hereto.

During such management and control, no expenditure of funds and no other official action shall be taken by Local Union No. 3 or the officers thereof without your or my express approval. You are instructed, however, that until further notice, you shall permit the Local Union and the officers and agents thereof to continue the day-to-day operations of the Local Union provided that the same do not conflict with your instructions or with any orders issued by me during the period of such management and control. You are hereby authorized to take any action which may be necessary to protect, preserve, and further the best interests of the Local Union, including the right to negotiate

agreements, or amendments or modifications of existing agreements by or on behalf of the said Local Union.

You are empowered to bind Local Union to contractual obligations by your own authority, and no person with whom you may transact business need obtain confirmation or authorization of your acts from any other officer or agent or from the membership of Local Union No. 3. It, of course, is understood that the funds and property of Local Union No. 3 shall continue to be used exclusively for the legitimate purposes of the Local Union consistent with the provisions of the International Constitution, subject only to your approval as to the validity of such expenditure.

I trust that you will be able to convince the membership that the conditions which gave rise to my action should be corrected promptly so that complete local autonomy may be restored as quickly as possible.

Fraternally yours,

EDWARD J. CARLOUGH
General President

EJC:nk

cc: Mr. Walter Brader, LU
David S. Turner, CST
Ckrm.
Donald W. Fisher, Esq.